

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MICHAEL ANTON HERNANDEZ, )  
)  
Petitioner, )  
)  
v. )  
)  
ROBERT P. HOUSTON, Director, )  
and FRED BRITTEN, Warden )  
T.S.C.I., )  
)  
Respondents. )

4:09CV3070

**MEMORANDUM  
AND ORDER**

This matter is before the court on Petitioner's Motion for Preliminary Injunction. (Filing No. 9.) Because Petitioner seeks relief that is not available to him in his federal habeas corpus action, Petitioner's Motion is denied.

Petitioner filed a Petition for Writ of Habeas Corpus on March 30, 2009, wherein he presented claims relating to his conviction for Distribution of a Controlled Substance. (Filing No. 1 at CM/ECF p. 1.) On May 18, 2009, Petitioner filed a Motion for Preliminary Injunction, asking the court to "invalidate a April 2, 2009, Memorandum" issued by the Department of Corrections that will require prisoners to pay for their own legal telephone calls effective August, 17, 2009. (Filing No. 9 at CM/ECF p. 2.) Petitioner also asked the court to order that "caseworkers in Housing Unit 2-B make time to provide Inmates with prompt legal phone calls." (Id. at CM/ECF p. 3.)

Petitioner seeks relief that is not available to him in his federal habeas corpus action. Restrictions on Petitioner's telephone usage pertain to the conditions of his confinement and are beyond the scope of the claims he raised in his Petition for Writ of Habeas Corpus. The conditions of Petitioner's confinement may be properly challenged in a 42 U.S.C. § 1983 action. See Williams v. Hopkins, 130 F.3d 333, 335

(8th Cir. 1997) (holding that claims challenging the conditions of confinement may be asserted through a § 1983 cause of action).

IT IS THEREFORE ORDERED that: Petitioner's Motion for Preliminary Injunction (filing no. [9](#)) is denied for the reasons set forth in this Memorandum and Order.

June 1, 2009.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge